



C.M.A.No.2730 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.12.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.2730 of 2014

and

M.P.No.1 of 2014

National Insurance Company Limited,
Divisional Office-2,
11, Ramakrishna Road,
Salem-7.

... Appellant / 2nd Respondent

vs.

1.Sumitha ... Respondent / Petitioner

2.Gnanendra Kumar Pathak ... Respondents / 1st respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 17.04.2014 made in M.A.C.T.O.P.No.298 of 2010 on the file of Motor Accident Claims Tribunal, (Special Subordinate Judge-II), Salem.

For Appellant : Mrs.N.B.Sureka

For Respondents : No Appearance

JUDGMENT



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The 2nd respondent/Insurance Company has preferred this appeal against the judgment and decree passed in M.A.C.T.O.P.No.298 of 2010 on the file of Motor Accident Claims Tribunal, (Special Subordinate Judge-II), Salem, on the point of negligence.

2. The claim petition was filed under Section 163 A of Motor Vehicles Act, claiming compensation of Rs.2,00,000/- for the injuries sustained in the road accident that occurred on 20.08.2009.

3. The Tribunal after evaluating the evidence has ordered compensation of Rs.1,97,000/- with 7.5% interest payable from the date of filing of petition till the date of deposit, payable by the 2nd respondent/Insurance Company at the first instance with liberty to recover the same from the 1st respondent at a later stage.

4. The learned counsel appearing for the appellant/Insurance Company would strenuously contend that as per Ex.X1, the accident register of Gokulam Hospital and the discharge summary issued by



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the same hospital, it is mentioned that due to the accidental fall while starting her two wheeler, near her house, she has sustained injuries. It is his further argument that in this regard, the staff of Gokulam Hospital has been examined as RW1 (Mr.Senthilkumar). There is no proper driving licence for the claimant at the time of accident. Therefore, the appellant/Insurance Company is not liable to pay compensation to the claimant herein.

5. It is the evidence of PW1 that on 20.08.2009, at about 8.30 a.m., when the claimant was proceeding in her two wheeler, bearing Reg.No.TN-30-D-9011, along the junction main road at the point of blue moon hotel, a two wheeler bearing Reg.No.PY-01-AW-9063, which came from the five roads towards junction, hit on her vehicle and the complainant fell down whereby she sustained fracture over her right leg and sustained injuries all over the body.

6. From a perusal of Ex.P1, F.I.R., the date of accident was 20.08.2009 and after three days, complaint was registered at the instance of the husband of the claimant herein. The F.I.R., reads that



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when the claimant was proceeding along the junction road, the above said two wheeler came from the five roads and hit against her and thereby she sustained injuries. But, in the treatment records, it is mentioned as alleged history of accidental fall. Further, in the F.I.R., it is mentioned as it is an accident and PW1 has also stated that when she was proceeding along the junction road, she was hit by a two wheeler which came in a rash and negligent manner.

7. It is pertinent to note that when the claim petition is filed under Section 163A of Motor Vehicles Act, the liability details and the extent there of need not be pleaded and proved. Section 163 A of the Motor Vehicles Act is extracted hereunder:

"163 A. Special provisions as to payment of compensation on structured formula basis.—

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to



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the legal heirs or the victim, as the case may be.

Explanation.—For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.”

A careful perusal of the above said provision, it indicates that the negligence aspect need not be pleaded and proved to sustain a claim under Section 163A of the Act.

8. The staff of Gokulam Hospital is examined as RW1 and the Insurance Company's Officer is examined as RW2.

9. As the claim petition is filed under Section 163 A of Motor



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Vehicles Act, the claimant need not to plead and prove negligence.

Therefore, based on the above said discussions, this appeal is liable to be dismissed.

10. In the result, this Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 17.04.2014 made in M.A.C.T.O.P.No.298 of 2010 on the file of Motor Accident Claims Tribunal, (Special Subordinate Judge-II), Salem, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking / Non-speaking order
ssn



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R.KALAIMATHI, J.,

ssn

To:

1. The Motor Accident Claims Tribunal,
Special Subordinate Judge,
Salem.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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and
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